

REMARKS

Claims 1 and 22-26 will be pending upon entry of this Reply. Claims 1 and 22 are allowable. Claim 26 was canceled in the previous response dated November 4, 2002. Claims 23 and 24 have been amended to more distinctly claim the subject matter which Applicants regard as their invention. The amendments are supported in the specification at page 4, lines 27 to 37. No new matter is introduced. The above amendments do not represent acquiescence to the Examiner's rejections. Rather, they are made to expedite prosecution of the present application. Applicants emphasize for the record that the amendments are not narrowing in scope and reserve the right to pursue the subject matter of the original claims in a related application. A marked up version of the amended claims indicating the changes is attached hereto as Exhibit A. For the Examiner's convenience, a copy of all pending claims is attached hereto as Exhibit B.

INTERVIEW SUMMARY RECORD

Applicants' representatives thank Supervisory Patent Examiner Ponnathapu Achutamurthy and Examiner Yong Pak for the courtesy of the telephone interview conducted June 3, 2003 in connection with the above-identified application. During the interview, the outstanding Advisory Action was discussed, in particular, the rejection of claims 23-25 under 35 U.S.C. § 112, first paragraph.

Claims 23-25 were rejected in the instant Advisory Action under 35 U.S.C. § 112, first paragraph for lack of written description and lack of enablement because independent claim 23 was drawn to a large variable genus of enzymes encompassing a broad class of enzymes able to phosphorylate any substrate, and one of ordinary skill would require guidance to make any proteins capable of phosphorylating any substrates. Applicants' representatives proposed overcoming this rejection by amending the claim language to recite "capable of phosphorylating a p38 substrate." Applicants' representatives also proposed amending claim 24 to clarify that the capability to activate p38 phosphorylation is not substantially diminished "as compared to a polypeptide having the amino acid sequence provided in SEQ ID NO:2."

During the interview, Examiners Acuthutamurthy and Pak indicated that the claim language proposed by Applicants' representatives during the interview was found to be allowable. The claims have been amended accordingly. Thus, Applicants submit that the rejection of the claims under 35 U.S.C. § 112, first paragraph for lack of written description and lack of enablement is obviated.

In view of the foregoing, Applicants request that rejection of the claims under § 112, first paragraph, be withdrawn.

DOUBLE PATENTING

The rejection of claims 23-26 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 6,074,862 ("the '862 patent") has been maintained. Applicants has requested that this rejection be held in abeyance until such time as allowable subject matter is indicated.

Although Applicants respectfully disagree with the Examiner, at such time allowable subject matter is indicated, Applicants will submit a terminal disclaimer in which the assignee of the above-identified application disclaims, as provided under 37 C.F.R. § 1.321, the terminal part of any patent granted on the above-identified application which would extend beyond the expiration of the '862 patent. The submission of the terminal disclaimer would overcome the Examiner's obviousness-type double patenting rejection over claims 1 and 2 of the '862 patent and Applicants request that the rejection be withdrawn.

CONCLUSION

Applicants respectfully request that the amendments and remarks of the present response be entered and made of record in the instant application, and that the Examiner reconsider the rejections in view of these amendments and remarks. Accordingly, after entry of this Amendment, all of the pending claims should be in condition for allowance. Withdrawal of the rejections and allowance of all the claims is earnestly requested.

Applicants respectfully request that the Examiner call Anthony M. Insogna at (212) 790-9090 if any questions or issues remain.

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Respectfully submitted,

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Exhibit A
Redline Version of Claims
U.S. Patent Application Serial No. 09/593,288
Attorney Docket No. 10624-021-999

23. An isolated polypeptide comprising a variant of the amino acid sequence provided in SEQ ID NO:2 that differs from SEQ ID NO:2 at 10% or less of the amino acid residues, wherein said polypeptide is capable of [phosphorylation of a substrate] phosphorylating a p38 substrate.

24. The isolated polypeptide of claim 23 wherein the ability of said polypeptide to stimulate p38 phosphorylation is not substantially diminished as compared to a polypeptide having the amino acid sequence provided in SEQ ID NO:2.